

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

June 30, 2025

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-2568

D.P., a minor, by her mother and next
friend, A.B.¹

Plaintiff-Appellee,

v.

MUKWONAGO AREA SCHOOL
DISTRICT and JOSEPH KOCH,

Defendants-Appellants.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 2:23-cv-00876

Lynn Adelman,
Judge.

ORDER

Based on the Supreme Court's recent decision in *United States v. Skrmetti*, No. 23-477, 2025 WL 1698785 (June 18, 2025), we sua sponte vacate our opinion dated June 12, 2025, and grant panel rehearing to consider whether the court should overrule

¹ The parties referred to the plaintiff and her mother as Jane Doe #1 and #2. In accordance with Rule 5.2(a)(3) of the Federal Rules of Civil Procedure, we refer to the minor plaintiff by her initials and do the same for her mother, who brings this suit on her behalf.

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Whitaker v. Kenosha Unified School District No. 1 Board of Education, 858 F.3d 1034 (7th Cir. 2017), and *A.C. v. Metropolitan School District of Martinsville*, 75 F.4th 760 (7th Cir. 2023), in light of *Skrmetti*.

The parties shall file supplemental briefs on that question. The parties are also invited to address whether, if the court overrules *Whitaker* and *Martinsville*, the challenged policy is valid under (1) the Equal Protection Clause in light of *Skrmetti*; and (2) Title IX in light of 20 U.S.C. § 1686, 34 C.F.R. § 106.33, and *Skrmetti*.

Appellants Mukwonago Area School District and Joseph Koch shall file a supplemental brief addressing these questions on or before July 31, 2025. Appellee D.P., by her mother and next friend, A.B., shall file a supplemental brief addressing these questions on or before September 2, 2025. The briefs shall be in the form specified for reply briefs in the Federal Rules of Appellate Procedure and corresponding circuit rules, except that the cover should be tan. Fed. R. App. P. 32(a)(2).